

**ASSEMBLY BILL**

**No. 206**

---

**Introduced by Assembly Member Gonzalez Fletcher**  
(Principal coauthor: Senator Galgiani)

January 23, 2017

---

An act to amend Sections 3351 and 3352 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 206, as introduced, Gonzalez Fletcher. Workers' compensation: employees.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, within the Department of Industrial Relations, to compensate an employee for injuries sustained in the course of his or her employment. Existing law requires an employer to carry workers' compensation insurance or secure the payment of compensation for an employee and makes the failure to do so a misdemeanor.

Existing law defines an employee, for purposes of the laws governing workers' compensation, to include, among other persons, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant, except as specified. Existing law excludes from the above definition of employee a person whose employment by the employer to be held liable was during the 90 calendar days immediately preceding the date of injuries, as specified, or was during the 90 calendar days immediately preceding the date of

the last employment, as specified, and either was, or was contracted to be, for less than 52 hours or was, or was contracted to be, for wages of not more than \$100.

This bill would specify that the above definition of employee applies without regard to immigration status. The bill would also remove the exclusion for an employee who was employed, or was contracted to be employed, for less than 52 hours, thereby expanding the definition of employee for purposes of the laws governing workers' compensation and expanding the scope of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 3351 of the Labor Code is amended to  
2 read:  
3 3351. "Employee" means every person in the service of an  
4 employer under any appointment or contract of hire or  
5 apprenticeship, express or implied, oral or written, whether lawfully  
6 or unlawfully employed, and includes:  
7 (a) Aliens and minors.  
8 (b) All elected and appointed paid public officers.  
9 (c) All officers and members of boards of directors of  
10 quasi-public or private corporations while rendering actual service  
11 for the corporations for pay. An officer or member of a board of  
12 directors may elect to be excluded from coverage in accordance  
13 with subdivision (p) of Section 3352.  
14 (d) Except as provided in subdivision (h) of Section 3352, any  
15 person employed by the owner or occupant of a residential dwelling  
16 whose duties are incidental to the ownership, maintenance, or use  
17 of the dwelling, including the care and supervision of children, or  
18 whose duties are personal and not in the course of the trade,  
19 business, profession, or occupation of the owner or occupant. *This*  
20 *subdivision applies without regard to immigration status.*

1 (e) All persons incarcerated in a state penal or correctional  
2 institution while engaged in assigned work or employment as  
3 defined in paragraph (1) of subdivision (a) of Section 10021 of  
4 Title 8 of the California Code of Regulations, or engaged in work  
5 performed under contract.

6 (f) All working members of a partnership or limited liability  
7 company receiving wages irrespective of profits from the  
8 partnership or limited liability company. A general partner of a  
9 partnership or a managing member of a limited liability company  
10 may elect to be excluded from coverage in accordance with  
11 subdivision (q) of Section 3352.

12 SEC. 2. Section 3352 of the Labor Code is amended to read:

13 3352. "Employee" excludes the following:

14 (a) A person defined in subdivision (d) of Section 3351 who is  
15 employed by his or her parent, spouse, or child.

16 (b) A person performing services in return for aid or sustenance  
17 only, received from any religious, charitable, or relief organization.

18 (c) A person holding an appointment as deputy clerk or deputy  
19 sheriff appointed for his or her own convenience, and who does  
20 not receive compensation from the county or municipal corporation  
21 or from the citizens of that county or municipal corporation for  
22 his or her services as the deputy. This exclusion is operative only  
23 as to employment by the county or municipal corporation and does  
24 not deprive that person from recourse against a private person  
25 employing him or her for injury occurring in the course of, and  
26 arising out of, the employment.

27 (d) A person performing voluntary services at or for a  
28 recreational camp, hut, or lodge operated by a nonprofit  
29 organization, exempt from federal income tax under Section  
30 501(c)(3) of the Internal Revenue Code, of which he or she or a  
31 member of his or her family is a member and who does not receive  
32 compensation for those services, other than meals, lodging, or  
33 transportation.

34 (e) A person performing voluntary service as a ski patrolman  
35 who does not receive compensation for those services, other than  
36 meals or lodging or the use of ski tow or ski lift facilities.

37 (f) A person employed by a ski lift operator to work at a snow  
38 ski area who is relieved of, and is not performing any, prescribed  
39 duties, while participating in recreational activities on his or her  
40 own initiative.

(g) A person, other than a regular employee, participating in sports or athletics who does not receive compensation for the participation other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, or other expenses incidental thereto.

(h) A person described in subdivision (d) of Section 3351 whose employment by the employer to be held liable, during the 90 calendar days immediately preceding the date of injury, for injuries as described in Section 5411, or during the 90 calendar days immediately preceding the date of the last employment in an occupation exposing the employee to the hazards of the disease or injury, for diseases or injuries as described in Section ~~5412~~, comes within either of the following descriptions:

~~(1) The employment was, or was contracted to be, for less than 52 hours.~~

~~(2) The employment was, 5412 and was employed, or was contracted to be, be employed, for wages of not more than one hundred dollars (\$100).~~

(i) A person performing voluntary service for a public agency or a private, nonprofit organization who does not receive remuneration for the services, other than meals, transportation, lodging, or reimbursement for incidental expenses.

(j) A person, other than a regular employee, performing officiating services relating to amateur sporting events sponsored by a public agency or private, nonprofit organization, who does not receive remuneration for these services, other than a stipend for each day of service no greater than the amount established by the Department of Human Resources as a per diem expense for employees or officers of the state. The stipend shall be presumed to cover incidental expenses involved in officiating, including, but not limited to, meals, transportation, lodging, rule books and courses, uniforms, and appropriate equipment.

(k) A student participating as an athlete in amateur sporting events sponsored by a public agency or public or private nonprofit college, university, or school, who does not receive remuneration for the participation, other than the use of athletic equipment, uniforms, transportation, travel, meals, lodgings, scholarships, grants-in-aid, or other expenses incidental thereto.

(l) A law enforcement officer who is regularly employed by a local or state law enforcement agency in an adjoining state and

1 who is deputized to work under the supervision of a California  
2 peace officer pursuant to paragraph (4) of subdivision (a) of Section  
3 832.6 of the Penal Code.

4 (m) A law enforcement officer who is regularly employed by  
5 the Oregon State Police, the Nevada Department of Motor Vehicles  
6 and Public Safety, or the Arizona Department of Public Safety and  
7 who is acting as a peace officer in this state pursuant to subdivision  
8 (a) of Section 830.39 of the Penal Code.

9 (n) A person, other than a regular employee, performing services  
10 as a sports official for an entity sponsoring an intercollegiate or  
11 interscholastic sports event, or any person performing services as  
12 a sports official for a public agency, public entity, or a private  
13 nonprofit organization, which public agency, public entity, or  
14 private nonprofit organization sponsors an amateur sports event.  
15 For purposes of this subdivision, "sports official" includes an  
16 umpire, referee, judge, scorekeeper, timekeeper, or other person  
17 who is a neutral participant in a sports event.

18 (o) A person who is an owner-builder, as defined in subdivision  
19 (a) of Section 50692 of the Health and Safety Code, who is  
20 participating in a mutual self-help housing program, as defined in  
21 Section 50087 of the Health and Safety Code, sponsored by a  
22 nonprofit corporation.

23 (p) An officer or member of the board of directors, as described  
24 in subdivision (c) of Section 3351, if he or she owns at least 15  
25 percent of the issued and outstanding stock of the corporation and  
26 executes a written waiver of his or her rights under this chapter  
27 stating under penalty of perjury that the person is a qualifying  
28 officer or director. The waiver shall be effective upon the date of  
29 receipt and acceptance by the corporation's insurance carrier and  
30 shall remain effective until the officer or member of the board of  
31 directors provides the insurance carrier with a written withdrawal  
32 of the waiver.

33 (q) An individual who is a general partner of a partnership or a  
34 managing member of a limited liability company who executes a  
35 written waiver of his or her rights under this chapter stating under  
36 penalty of perjury that the person is a qualifying general partner  
37 or managing member. The waiver shall be effective upon the date  
38 of receipt and acceptance by the partnership or limited liability  
39 company's insurance carrier and shall remain effective until the

1 general partner or managing member provides the insurance carrier  
2 with a written withdrawal of the waiver.

3 SEC. 3. No reimbursement is required by this act pursuant to  
4 Section 6 of Article XIII B of the California Constitution because  
5 the only costs that may be incurred by a local agency or school  
6 district will be incurred because this act creates a new crime or  
7 infraction, eliminates a crime or infraction, or changes the penalty  
8 for a crime or infraction, within the meaning of Section 17556 of  
9 the Government Code, or changes the definition of a crime within  
10 the meaning of Section 6 of Article XIII B of the California  
11 Constitution.

O